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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,222	12/08/2003	Tong Zhu	08971.0008	2511
22852	7590	01/16/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER YALEW, FIKREMARIAM A	
			ART UNIT 2436	PAPER NUMBER
			MAIL DATE 01/16/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/730,222	<b>Applicant(s)</b> ZHU, TONG
<b>Examiner</b> Fikremariam Yalew	<b>Art Unit</b> 2436

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-10, 12-22, 25-35, 38 and 39.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art Unit 2436

Continuation of 11, does NOT place the application in condition for allowance because: The applicant requests reconsideration and withdrawal of the 35 USC 101 rejection but the examiner maintains the previous 101 rejection because the applicant argument is not persuasive. On the applicant specification 0040 the applicant defines storage devices like hard discs, floppy disks or CD ROM, or other forms of RAM or ROM, a carrier wave (See the final rejection). Applicant also argued that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would modify in order to provide a mechanism for quickly repairing a failure in a communications links in tunnels established for a realtime data transfer (See *Swallow* col 2 lines 14-17). The applicant also points out the examiner introduced a new rejection by refusing to give patentable weight to the features recited in the preamble of the independent claims. The examiner disagrees and points out that is supporting argument instead of a new rejection. It is not a new rejection. In response to applicant's argument that the combination of *Swallow* and *Jaros* do not suggest or teach "a network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node". In response to applicant's arguments, the recitation a network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's argument that the combination of *Swallow* and *Jaros* do not suggest or teach "transmitting over the network an indication from the first node to the second node that the third node has failed". The examiner disagrees and points out that *Swallow* teach "transmitting over the network an indication from the first node to the second node that a node has failed (See *Swallow* col 2 lines 14-27 (i.e., detection of link failure, each communication link is stored in a node prior to any communication failure)). The primary reference (*Swallow*) does not explicitly teach "the third node has failed" that's why the examiner used the second reference (*Jaros*) to cure the deficiency of *Swallow* reference such as "the third node has failed". The combination of *Swallow* and *Jaros* teach "the third node has failed (See *Jaros* col 1 lines 32-40 and col 3 lines 52-58, claim 1 (i.e., detecting subsequent failure of the selected third node)). The applicant also argued that the combination of *Swallow* and *Jaros* do not teach or suggest "reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node to be transmitted over the network between the fourth node and the first node after the indication has been received by the second node". The examiner disagrees and points out that the combination of *Swallow* and *Jaros* teach reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node to be transmitted over the network between the fourth node and the first node after the indication has been received by the second node (See *Swallow* col 3 lines 29-40, col 7 line 63 through col 8 line 3 and col 8 lines 31-52 (i.e., intermediate node A redirects data packets for the primary tunnel through the by pass tunnel to intermediate node C). The applicant also argued that the prior art do not teach or suggest "wherein the security protocol comprises at least one of secured socket layer (SSL), secure HTTP (SHTTP), Private communications Technology and IPSEC". The examiner disagrees and points out the prior art teach wherein the security protocol comprises at least one of secured socket layer (SSL), secure HTTP (SHTTP), Private communications Technology and IPSEC (See *Jaros* col 4 lines 32-59 (i.e., SPI, ESP are part of IPSEC)).